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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 282

UNITED STATES OF AMERICA, APPELLANT

vs.

D. D. ADAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

FILED JULY 31, 1929

(34413)

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3 In United States District Court, Eastern District of Arkansas

Section 5209, U. S. R. S.

Indictment

Filed April 3, 1928

In the District Court of the United States in and for the Eastern District of Arkansas, at the April term thereof, A. D. 1928, held in the western division of said district.

The grand jurors of the United States, impaneled, sworn, and charged to inquire into offenses committed in the eastern district of Arkansas, at the term aforesaid of the court aforesaid, on their oaths present:

That Drury D. Adams, Charles D. Metcalf, and Edwin Army Hodges, on or about the 23rd day of April, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents—to wit, that is, the said Drury D. Adams was president, the said Charles D. Metcalf was cashier, and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the Eighth Federal Reserve District, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; that they, the said Drury D. Adams, Charles D. Metcalf, and Edwin Army Hodges, so being president, cashier, and assistant cashier, respectively, of said member bank, then and there with intent on their part to injure and

4 defraud said member bank and to deceive the officers and directors of said Federal reserve bank and of said member bank, and the examine the affairs of said member bank, unlawfully, wilfully, and feloniously did make and cause to be made in a certain "Report of condition" of said Union Bank & Trust Company, at the close of its business on April 12, 1926, made to the said Federal Reserve Bank of St. Louis, Missouri, as required under the laws of the United States, a certain false entry, more particularly described as follows, to wit: In the division and space of the said "Report on

condition" under the heading "Resources" in line "2," following the written words and figures "Overdrafts—Secured, $6,072.66. Unsecured, $86.10," and in the money column to the right, with the heading "Dollars, cts." in the figures following, to wit: "6,158.76," which said entry then and there purported to show, and did in substance and effect indicate and declare, that the total amount of overdrafts in said member bank at the close of its business on the 12th day of April, 1926, was the sum of $6,158.76, when in truth and in fact the total amount of overdrafts in said member bank at the close of its business on the 12th day of April, 1926, was a different and much larger sum and amount, to wit—the sum and amount of $232,960.01—and said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams, Charles D. Metcalf, and Edwin Army Hodges then and there well knew, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count II

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That Drury D. Adams, Charles D. Metcalf, and Edwin Army Hodges, on or about the 10th day of January, 1927, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit—that is, the said Drury D. Adams was president, the said Charles D. Metcalf was cashier, and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and
5 there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which the Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the Eighth Federal Reserve District, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"—that they, the said Drury D. Adams, Charles D. Metcalf, and Edwin Army Hodges, so being president, cashier, and assistant cashier, respectively, of said member bank, then and there with intent on their part to injure and defraud said member bank and to deceive the officers and directors of said Federal reserve bank and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, and feloniously did make and cause to be made in a cer-

tain "Report of condition" of said Union Bank & Trust Company, at the close of its business on December 31, 1926, made to the said Federal Reserve Bank of St. Louis, Missouri, as required under the laws of the United States, a certain false entry, more particularly described as follows, to wit: In the division and space of the said "Report of condition" under the heading "Resources" in line "12," following the written words "Due from banks (other than Federal reserve banks), bankers, and trust companies in the United States," and in the money column to the right, with the heading "Dollars, cts." in the figures following, to wit: "138,409.52," which then and there purported to show, and did in substance and effect indicate and declare, that the total amount due said member bank from banks (other than Federal reserve banks), bankers, and trust companies in the United States, was the sum and amount of $138,409.52, when in truth and in fact the total sum and amount due said member bank at the close of its business on December 31, 1926, from banks (other than Federal reserve banks), bankers, and trust companies in the United States, was a different and much smaller
6 sum and amount, to wit: The sum and amount of $91,284.27, and that the said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams, Charles D. Metcalf, and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

(Signed) IRA J. MACK,
Assistant United States Attorney.

[File indorsement omitted.]

10 [Copy]

In United States District Court for the Northern Division of the Eastern District of Arkansas

No. 1113

UNITED STATES VS. D. D. ADAMS

Plea of former jeopardy and former acquittal

Filed June 3, 1929

Comes the defendant, D. D. Adams, and files this, his plea of "Former jeopardy" and "Former acquittal" of the charge embraced in Count II of the indictment herein, and in support of said plea he alleges:

The said Count II of the indictment herein charges that the defendant, D. D. Adams, C. D. Metcalf, and Edwin Army Hodges, were officers and agents of the Union Bank & Trust Company, of Batesville, Arkansas, and that with intent on their part to injure and defraud said bank and to deceive the officers and examiners appointed

under the laws of the United States to examine the affairs of said member bank, and to deceive the officers and directors of said Federal reserve bank, did unlawfully, wilfully, and feloniously make and cause to be made in a certain "Report of condition" of said Union Bank & Trust Company, at the close of its business on December 31st, 1926, made to the Federal Reserve Bank of St. Louis, Mo., as required under the laws of the United States, a certain false entry, more particularly described as follows, to wit: In the division and space of said Report of condition, under the heading "Resources," in line 12, following the written words, "Due from banks" (other than Federal reserve banks), bankers, and trust companies in the United States," and in the money column on the right with the heading "Dollars, cents" in the figures following, to wit—"$138,-
11 409.52"—which then and there purported to show, and did in substance and effect indicate and declare, that the total amount due said member bank from banks (other than Federal reserve banks), bankers, and trust companies in the United States, was the sum and amount of $138,409.52, when in truth and in fact the total sum and amount due said member bank at the close of its business on December 31st, 1926, from banks other than Federal reserve banks, was different and much smaller sum and amount, to wit—the sum and amount of $91,284.27—and that the said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said D. D. Adams, Charles D. Metcalf, and Edwin Army Hodges then and there well knew, etc.

That heretofore—to wit, on July 9th, 10th, and 11th, 1928—this defendant had been tried before a jury duly selected and empanelled for that purpose in this, the District Court of the United States, for the Northern Division of the Eastern District of Arkansas, a court of proper and competent jurisdiction, under an indictment theretofore returned against him, charging him with irregularities and crimes growing out of the same items which constitute the difference in the figures above quoted, or $47,125.25, said irregularities and crimes being charged in indictment numbered 1116 in this court, as follows:

That said indictment numbered 1116 upon which defendant has been tried as aforesaid, in Count No. III thereof, charges that the said Drury D. Adams and Edwin Army Hodges, being officers and agents of the Union Bank & Trust Company, a banking corporation and a member of the Federal Reserve Bank of St. Louis, with intent on their part to injure and defraud said member bank, and to deceive the officers and directors of the Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its banking business—that is to say, in the book and record known
12 and designated as the "journal, ledger, and daily balance"

book, on the page in said book dated "Aug. 23, 1926," on the debit side of said page under the heading "Items" in the division and space of said page for the account of "Fid. Bk. & Tr. Co.," a copy of said entry being as follows:

"D. D. Adams & Sons, 10 000."
"By D. D. A."

which entry then and there purported to show and did in substance and effect indicate and declare that on said 23rd day of August, 1926, said member bank had made a remittance of $10,000.00 to the Fidelity Bank & Trust Co., of Memphis, Tenn., whereas in truth and in fact no such remittance of $10,000.00 was made on said date by said member bank to the said Fidelity Bank & Trust Co., of Memphis, Tenn., and said Fidelity Bank & Trust Company was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustified, unwarranted, and false, etc.

And said indictment numbered 1116 upon which the defendant has been tried as aforesaid, in Count VI thereof, charges that the said D. D. Adams and Edwin Army Hodges, as officers and agents of the Union Bank & Trust Company, of Batesville, Arkansas, a banking corporation and a member of the Federal Reserve Bank of St. Louis, Mo., did on the 8th day of March, 1927, and Count V thereof charges that they did, on the 5th day of October, 1926, with intent on their part to injure and defraud said member bank, and to deceive the officers and agents of said Federal Reserve Bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its business, that is to say, in a book and record of said member bank known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated March 9th, 1927 (in count No. VII), and on the page in said book dated "Oct. 25, 1926" (in Count V), on the debit side of said page, under the heading "Items," in the division and space of said page used for "Sundry banks (items in transit)," a copy of said item being as follows: "Hazen 27,125.25," which said entry then and there purported to show, and in substance and effect did indicate and declare
13 that on said respective dates said member bank had made a remittance of $27,125.25 to the Bank of Grand Prairie, and said Bank of Grand Prairie was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustifiable, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges then and there well knew, etc.

And said indictment No. 1116, upon which the defendant has been tried as aforesaid, in Count VII thereof, charges that the said Drury D. Adams and Edwin Army Hodges, on or about the 31st day of December, 1926, at Batesville, being officers and agents of the Union

Bank & Trust Company, a banking corporation, and a member of the Federal Reserve Bank of St. Louis, Mo., with intent on their part to injure and defraud the said member bank, and to deceive the officers and directors of the Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there being used by said member bank in transacting its banking business, known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated "Dec. 31, 1926," on the debit side of said page, under the heading "Items" in the division and space of said page used for the account of "Lib. Cent. Tr. Co.," a copy of said entry being as follows: "R 10000.00," which entry then and there purported to show and did in substance and effect indicate and declare that on said 31st day of December, 1926, said member bank had made a remittance of $10,000.00 to the Liberty Central Trust Company, of St. Louis, Missouri, whereas in truth and in fact no such remittance of $10,000.00 was made on said date by said member bank to the said Liberty Central Trust Company, and said Liberty Central Trust Company was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustified, unwarranted and false, etc.

That said three items of $10,000.00, $27,125.25, and $10,000.00 embraced, mentioned, and described in counts numbered III,
14 VI, V, and VII of said indictment No. 1116, upon which said defendant was tried as aforesaid, aggregated the sum of $47,125.25, which makes the exact difference in the two items and amounts mentioned in the present indictment, and defendant was found "not guilty" of all of the charges embraced in said indictment No. 1116, and "not guilty" of making false entries concerning said three items aggregating $47,125.25 aforesaid.

That evidence was introduced in said former trial relative to all of said items of $10,000, $27,125.25, and $10,000, and said evidence was the same evidence that the Government must now rely upon for a conviction herein, and said charges of false entries are the identical entries upon which the present indictment (Count II thereof) is based and the same entries upon which the Government must now rely upon as being false and unwarranted before it can convict herein, and the charge embraced in Counts III, VI, V, and VII of said former indictment being in effect the same charge as that embraced in Count II of the present indictment against him, and the evidence required to convict in this cause being the same identical evidence heretofore introduced and relied upon by the Government, and said indictment being based upon the same identical section of law, to wit, Revised Statutes of the United States, sec. 5209, Sept. 26, 1918, c. 177 (40 Stat. 972).

That before the jury would be authorized to convict the defendant in this case of making false entries it would first be necessary for

it to consider the same evidence submitted to the jury in the former trial and to draw different and opposite conclusions from said evidence to that reached by the jury in the former trial.

And defendant here tenders proof of all the allegations and facts set up and alleged herein, and prays that upon a hearing of said evidence that the indictment herein be quashed and that defendant be discharged.

(Signed) T. H. CARAWAY,
COLEMAN & REEDER,
Attorneys for Defendant.

[File indorsement omitted.]

15 *Exhibit to plea of former jeopardy and acquittal*

UNITED STATES OF AMERICA,
Eastern District of Arkansas.

In the District Court of the United States, in and for the Eastern District of Arkansas, at the April term thereof, A. D. 1928, held in the Western Division of said district.

The grand jurors of the United States, impanelled, sworn, and charged to inquire into offenses committed in the Eastern District of Arkansas, at the term aforesaid, of the court aforesaid, on their oaths present:

That Drury D. Adams and Army Hodges on or about the 30th day of June, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit—that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the eighth Federal reserve district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there,

16 with intent on their part to injure and defraud said member bank, and to deceive the officers and directors of said Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, fraudulently, and feloni-

ously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its said banking business—that is to say, in the book and record of said member bank known and designated as "journal, ledger, and daily balance" book, on the page in said book dated "Jun. 30, 1926," on the debit side of said page under the head "Items" in the division and space of said page used for the account of "Fed. Bk. & Tr. Co.," a copy of said entry being as follows:

"R. 75000,"

which said entry then and there purported to show and did in substance and effect indicate and declare that on said 30th day of June, 1926, said member bank had made a remittance of $75,000 to the Federal Bank & Trust Company of Little Rock, Arkansas, whereas in truth and in fact no such remittance of $75,000 was made on said date by said member bank to the said Federal Bank & Trust Company, and said Federal Bank & Trust Company was not then and there entitled to be charged therefor, and the said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges then and there well knew, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Count II

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore—to wit, on or about the 23rd day of August, 1926—the said Drury D. Adams and Edwin Army Hodges, at Batesville, in Independence County, in the State of Arkansas, were officers and agents to wit—that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Co., of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established, and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, which said Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the eighth Federal reserve district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively,

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of said member bank, then and there, with intent on their part to injure and defraud said member bank, and to deceive the officers and directors of said Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, willfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its said banking business—that is to say, in the book and record of said member bank, known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated "Aug. 23, 1926," on the debit side of the said page under the heading "Items," in the division and space of said page used for the account of "Fed. Bk. & Tr. Co.," a copy of said entry being as follows:

"D. D. Adams and Sons, 15,000.
"By D. D. A."

18 which said entry then and there purported to show and did in substance and effect indicate and declare that on said 23rd day of August, 1926, said member bank make a remittance of $15,000.00 to the Federal Bank & Trust Company, of Little Rock, Arkansas, whereas in truth and in fact no such remittance of $15,000 was made on said date by said member bank to said Federal Bank & Trust Company, and said Federal Bank & Trust Company was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statutes in such case made and provided and against the peace and dignity of the United States.

Count III

And the grand jury aforesaid, upon their oaths, further present.

That Drury D. Adams and Edwin Army Hodges, on or about the 23rd day of August, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit—that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company, of Batesville, Arkansas, was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Co. was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the eighth Federal reserve district, in compliance with and under and by means of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in

the State of Arkansas, as a member of the Independence
19 Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there with intent on their part to injure and defraud said member bank, and to deceive the officers and directors of said Federal reserve bank and of said member bank, and the agents and examiners of said member bank, unlawfully, wilfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its banking business—that is to say, in the book and record of said member bank known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated "Aug. 23, 1926," on the debit side of said page for the account of "Fid. Bk. & Tr. Co.," a copy of said entry being as follows:

"D. D. and Sons, 10000.
"D. D. A.,"

which entry then and there purported to show and did in substance and effect indicate and declare that on said 3rd day of August, 1926, said member bank had made a remittance of $10,000.00 to the Fidelity Bank & Trust Co., of Memphis, Tennessee, whereas in truth and in fact no such remittance of $10,000.00 was made on said date by said member bank to the said Fidelity Bank & Trust Company, and said Fidelity Bank & Trust Company was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count IV

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

20 That Drury D. Adams and Edwin Army Hodges, on or about the 23rd day of August, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit—that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Tr. Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the

eight Federal reserve district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there with the intent on their part to injure and defraud said member bank, and divers other persons whose names are to the grand jurors unknown, and who were creditors, shareholders, and depositors of said member bank, certain of the moneys, funds, and credits of said member bank, then and there being to the amount and of the value of $25,000.00, the particular kind, description, numbers, amounts, and values of which said moneys, funds, and credits, respectively, this grand jury has no means of knowing, and can not therefore here set out, did unlawfully, fraudulently, feloniously, and wilfully misapply by unlawfully, fraudulently, feloniously,
21 and wilfully and not for any use, benefit or advantage of the said member bank, converting, and applying the same moneys, funds, and credits to the use, benefit, and advantage of the said Drury D. Adams and divers other persons to the grand jurors unknown, which said conversion and misapplication of the last-mentioned moneys, funds, and credits was then and there accomplished by the said Drury D. Adams and said Edwin Army Hodges in the following manner, that is to say, by virtue of the power of control, direction, and management which the said Drury D. Adams and Edwin Army Hodges as president and assistant cashier, respectively, of said member bank, then and there possessed and exercised over the moneys, funds, and credits of the same, the said Drury D. Adams and Edwin Army Hodges, at the time and place in this count aforesaid, with the intent aforesaid, did unlawfully, feloniously, fraudulently, knowingly, and wilfully misapply the sum of $25,000 of the moneys, funds, and credits of the said member bank to the payment of a certain draft, No. 8660, for the sum of $25,000.00, bearing date "Aug. 21, 1926," issued by said member bank by the said "E. A. Hodges, A. cashier," drawn on and payable to the order of the Liberty Central Tr. Co., of St. Louis, Mo., and which draft was paid by the said Drury D. Adams and Edwin Army Hodges out of the moneys, funds, and credits of the said member bank for the use, benefit, and advantage of the said member bank, whereby the said sum became then and there lost to the said member bank, and the moneys, funds, and credits of the same then and there were and are depleted in that amount, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Count V

That Drury D. Adams and Edwin Army Hodges, on or about the 5th day of October, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit—that is, the said Drury D. Adams was president and the said Edwin Army
22 Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Mo., in the eighth Federal reserve district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there with intent on their part to injure and defraud said member bank, and to deceive the officers and directors of said Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its banking business—that is to say, in a book and record of said member bank known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated "Oct. 5th, 1926," on the debit side of said page under the heading "Items," in the division and space of said page used for the account of "Sundry banks (items in transit)," and being the eighth item thereof, a copy of said entry being as follows:

"Hazen 27,125.25"

which said entry then and there purported to show and in
23 substance and effect did indicate and declare that on said October 5, 1926, said member bank had made a remittance of $27,125.25 to the Bank of Grand Prairie, and said Bank of Grand Prairie was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustifiable, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Count VI

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That Drury D. Adams and Edwin Army Hodges, on or about the 8th day of March, 1927, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit—that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Mo., in the eighth Federal reserve district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in the county of Independence, and in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and
24 assistant cashier, respectively, of said member bank, then and there, with intent on their part to injure and defraud said member band, and to deceive the officers and directors of said Federal reserve bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, willfully, fraudently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its said banking business—that is to say, in the book and record of said member bank known and designated as "journal, ledger, and daily balance" book, on the page in said book dated "Mar. 8, 1927," on the debit side of said page under the heading "Items," in the division and space of said page used for the account of the "Sundry names (items in transit)," and being the ninth item thereof, a copy of said entry being as follows:

"Hazen, 27,125.25"

which said entry then and there purported to show, and did in substance and effect indicate and declare, that on the said 8th day of March, 1927, said member bank had sent to the Bank of Prairie, Hazen, Arkansas, certain items aggregating $27,125.25 for collection for the account of the said member bank, whereas in truth and in fact no such remittance of $27,125.25 for the account of said member bank was sent by said member bank on the said 8th day of March,

1927, to the said Bank of Grand Prairie, Hazen, Arkansas, for collection for the account of the said member bank, and the said Bank of Grand Prairie was not then and there entitled to be charged therefor, and said entry so made as aforesaid was unjustifiable, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Count VII

25 And the grand jurors aforesaid, on their oaths aforesaid, do further present:

That Drury D. Adams and Edwin Army Hodges, on or about the 31st day of December, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit—that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Ark., which said Union Bank & Trust Co., was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Mo., in the eighth Federal district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there with intent on their part to injure and defraud the said member bank, and to deceive the officers and directors of the Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, willfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting

26 its said banking business—that is to say, in a book and record of said member bank, known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated "Dec. 31, 1926," on the debit side of said page under the heading "Items," in the division and space of said page used for the account of "Lib. Cent. Tr. Co.," a copy of said entry being as follows:

"R 10000.00"

which said entry then and there purported to show and did in substance and effect indicate and declare that on said 31st day of December, 1926, said member bank had made a remittance of $10,000 to the Liberty Central Trust Company, of St. Louis, Missouri, whereas in truth and in fact no such remittance of $10,000.00 was made on said date by said member bank to the said Liberty Central Trust Company, and said Liberty Central Trust Company was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

(Signed) IRA J. MACK,
Assistant United States Atty.

Indorsed:
No. 9100.
Signed C. C. Kavanaugh, foreman.
Filed April 3, 1928.

28 In United States District Court, Eastern District of Arkansas, Northern Division

No. 1113

UNITED STATES OF AMERICA *vs.* D. D. ADAMS ET AL.

Judgment

June 4, 1929

Now, on this day, June 4, 1929, this cause comes on for consideration on the regular call of the docket, and the United States appears by Charles F. Cole, United States attorney for the Eastern District of Arkansas, and the defendant, D. D. Adams, appears in person and by his attorneys, T. H. Caraway and Coleman & Reeder. And thereupon is presented to the court the plea of former jeopardy and former acquittal heretofore filed herein by the defendant, D. D. Adams, to the second count of the indictment against him herein, and the same is submitted to the court upon the indictment herein and said plea of former jeopardy and former acquittal, a copy of the indictment in the case of the United States vs. D. D. Adams, No. 1116, formerly pending in the District Court of the United States, Northern Division of the Eastern District of Arkansas, and the judgment of acquittal in said case, entered upon a verdict of not guilty returned by a jury therein, no other evidence being introduced, the argument of counsel

in support of said plea, as well as the argument of the district attorney in opposition thereto, and the court being well and sufficiently advised as to the law arising upon said plea doth find that under the provisions of section 5209 of the Revised Statutes of the United States, as amended, and as now construed by this court, said plea of former jeopardy and former acquittal should be sustained.

29 Thereupon the United States of America, through its said district attorney, entered a nolle-prosequi as to the first count of the indictment herein as to all of the defendants and as to the second count thereof as to defendant Edwin Army Hodges.

It is, therefore, by the court considered, ordered, and adjudged that said plea of former jeopardy and former acquittal filed by D. D. Adams as to the second count of said indictment be, and the same is, hereby sustained, and said indictment is hereby dismissed as to the defendant D. D. Adams, and that the bond of defendant D. D. Adams be exonerated. Thereupon the plaintiff, the United States of America, through its said district attorney, objected and excepted to the ruling and judgment of the court in sustaining said plea of former jeopardy and former acquittal and dismissing the second count of said indictment and exonerating the bond of defendant, D. D. Adams, and asked that its objections and exceptions be noted of record, which is hereby accordingly done.

It is further ordered that the second count of the indictment herein as to the defendant Charles D. Metcalf is continued until the next term of this court.

(Signed) JOHN E. MARTINEAU,
United States District Judge.

30 [Copy]

In United States District Court

Memorandum on sustaining plea of former jeopardy and acquittal

The plea of the defendant, Drury D. Adams, of former jeopardy and former acquittal coming on for hearing, the court finds that the three items constituting the difference between the deposits actually in the three banks are the three items upon which three counts of a former indictment were based, and upon which the defendant Drury D. Adams was tried and acquitted, and that the only difference between this charge and the charges in the former indictment is that entries were made of the same items in different books or reports, the charge in this indictment and the charges in the former indictment growing out of the same acts of the defendant, Drury D. Adams, and the defendant's plea of former jeopardy and former acquittal is sustained.

(Signed) JOHN E. MARTINEAU,
U. S. District Judge.

32 In United States District Court

[Title omitted.]

Order allowing appeal

Upon reading the petition of the United States of America for appeal from this court to the Supreme Court of the United States and consideration of the assignment of errors presented therewith, it is by the court ordered that the appeal as prayed for be and the same is hereby allowed and granted, and the clerk of this court is hereby directed to forthwith prepare a transcript of the record, proceedings, papers, orders, and judgments entered in said cause under the seal of this court, and transmit the same to the Supreme Court of the United States.

Signed this 1 day of July, 1929.

(Signed) JOHN E. MARTINEAU,
United States District Judge,
Eastern District of Arkansas.

33 In United States District Court

[Title omitted.]

Petition for appeal

Filed July 1, 1929

TO THE HONORABLE JOHN E. MARTINEAU, JUDGE OF THE DISTRICT COURT AFORESAID:

And now comes the United States of America, plaintiff herein, by Charles F. Cole, United States district attorney, and respectfully shows to said court that it feels itself aggrieved by the judgment of this court made and entered of record by said court on the 4th day of June, 1929, in the above-entitled cause, sustaining the plea of former jeopardy and former acquittal filed by the defendant, D. D. Adams, to the second court of the indictment herein and dismissing said second count of said indictment and exonerating the bond of the defendant, and it hereby appeals from said order and judgment to the Supreme Court of the United States from said District Court of the Northern Division of the Eastern District of Arkansas, for the reasons particularly specified in the assignment of errors which is filed herein, and it prays that this appeal may be allowed by this court and that a transcript of the record, proceedings, and papers upon which said order and judgment was made, duly authenticated by the seal of this court, may be sent to the Supreme Court of the United States, as by law provided.

(Signed) CHAS. F. COLE,
United States District Attorney for the Eastern District of Arkansas, Attorney for Plaintiff.

[File indorsement omitted.]

34 In United States District Court

[Title omitted.]

Assignment of errors

Filed July 1, 1929

Comes the plaintiff, United States of America, by Charles F. Cole, and prays an appeal from the final judgment of this court in sustaining the plea of former jeopardy and former acquittal filed by the defendant, D. D. Adams, to the second count of the indictment herein and dismissing said second count of said indictment and exonerating the bond of said defendant, and assigns as errors the following, to wit:

I

That the court erred in sustaining said plea of former jeopardy and former acquittal and dismissing said second count of said indictment and exonerating the bond of said D. D. Adams.

II

That the judgment of the court is contrary to the law.

Wherefore, said plaintiff in error prays that the said judgment of the said District Court of the United States may be reversed and held for naught, and that plaintiff be granted such other and further relief as may seem right to the court and provided by law.

(Signed) CHAS. F. COLE,
United States District Attorney for the Eastern District of Arkansas, Attorney for United States.

[File indorsement omitted.]

35 [Citation in usual form showing service on D. D. Adams omitted in printing.]

36 [Clerk's certificate to foregoing transcript omitted in printing.]

37 In Supreme Court of the United States

Statement of points upon which appellant will rely, and designation of parts of record to be printed

Filed Aug. 10, 1929

Statement

I

Appellant will rely upon the following point in the above-entitled cause:

38 1. That the court below erred in sustaining the plea of former jeopardy and former acquittal, and dismissing the second count of the pending indictment.

II

Omitting pages 1, 2, 7, 8, 9, 27, and 31, the record as filed should be printed.

CHARLES E. HUGHES, JR.,
Solicitor General.
O. R. LUHRING,
Assistant Attorney General.
HARRY S. RIDGELY,
Attorney.

39 [File indorsement omitted.]

[Indorsement on cover:] File No. 34,413. E. Arkansas D. C. U. S. Term No. 282. United States of America, appellant, vs. D. D. Adams. Filed July 31, 1929. File No. 34,413.

U. S. GOVERNMENT PRINTING OFFICE: 1929